

AMENDED IN SENATE MARCH 8, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

**SENATE BILL**

**No. 47**

**Introduced by Senator Battin**  
(Principal coauthor: Assembly Member Keeley)

February 22, 2001

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An act *to amend Section 1108 of the Food and Agricultural Code, and to add and repeal Article 10.5 (commencing with Section 391.1) of Part 1 of Division 1 of the Public Utilities Code, relating to ~~public utilities~~ energy*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as amended, Battin. Public utilities: interim short-run avoided cost methodology.

(1) Existing law provides for a short-run avoided cost methodology for pricing electricity generated by a nonutility small power production or cogeneration facility, as defined.

This bill, regarding a contract between the Pacific Gas and Electric Company; *or* the Southern California Edison Company, ~~or the San Diego Gas and Electric Company~~, *all both* California public utility corporations, and qualifying small power production or cogeneration facilities (QF), as defined, would specify the energy pricing methodology, to be used under purchase power agreements for QFs. The bill would require the commission to ~~provide standard form review and approve~~ amendments, *as specified*, ~~for~~ *to* power purchase agreements to implement the provisions of this act. The bill would require the commission to ~~include in those amendments for~~ *permit* full

cost recovery for the entire duration of the amendments. *The bill would require the commission at the time of approving the amendments to make an irrevocable determination of per se reasonableness of the amendments, including full cost recovery by the electrical corporation of the resulting tests.*

*The bill would permit electrical corporations to use hedging contracts as a method for managing the natural-gas-cost component of its payments to gas-fired QFs. The bill would permit an electric corporation to enter into fixed-price energy contracts with gas-fired QFs that do not extend beyond January 31, 2006, if the corporation uses the hedging provisions of the bill. The bill would require that all costs associated with commission approved hedging transactions be recovered from the generation-related portion of the retail rates before any of these revenues are allocated to the California Procurement Adjustment. The bill would require that all benefits from hedging transactions be used solely to reduce the electrical corporation's retail electric rates for electricity.*

This bill would ~~require~~ permit the Treasurer to approve natural gas prices for specified ~~implementation agreements for gas purchase options for gas-fired QFs. The bill would require the Treasurer to find the gas price to be~~ permit the Treasurer to disapprove an implementation agreement if the long-term gas price was not in the best financial interest of the state. The bill would require the Treasurer at least 3 times per year to submit a report to the Governor and to appropriate committees of the Legislature on the ~~performance of each public utility regarding results of gas-fired QFs under the gas purchase options.~~

(2) Existing law establishes the ~~Central Valley~~ Agricultural Biomass-To-Energy Incentive Grant Program.

This bill would provide additional funding for the program, upon appropriation, and would extend the program ~~until June 30, 2006 to July 1, 2006.~~

(3) Because existing law makes it a crime to violate an order of the Public Utilities Commission, this bill would expand the definition of an existing crime by requiring the commission to issue new orders, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The provisions of the bill would become ~~in operation~~ *inoperative* on July 1, 2006, and would be repealed as of January 1, 2007. *The provisions of the bill would become operative only if a statute is enacted, as specified.*

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 1108 of the Food and Agricultural Code*  
2 *is amended to read:*

3 1108. This part shall remain in effect only until ~~January 1,~~  
4 ~~2004 July 1, 2006~~, and as of that date is repealed, unless a later  
5 enacted statute, that is enacted before ~~January 1, 2004 July 1,~~  
6 ~~2006~~, deletes or extends that date.

7 SEC. 2. Article 10.5 (commencing with Section 391.1) is  
8 added to Part 1 of Division 1 of the Public Utilities Code, to read:

9  
10 Article 10.5. Interim Short-Run Avoided Cost Energy  
11 Methodology  
12

13 391.1. For the purposes of this article, the following terms  
14 have the following meanings:

15 (a) “Burnertip price of gas” means the ~~border price of gas plus~~  
16 ~~the interstate and intrastate gas transportation costs~~ *cost of the*  
17 *commodity plus the cost of transporting the commodity to the*  
18 *burnertip.*

19 (b) “Contract” means a power ~~purchasing~~ *purchase*  
20 *agreement.*

21 (c) “Gas-fired QF” means a qualifying cogeneration facility  
22 whose primary fuel is natural gas.

23 (d) “GP” is “Gas Price” which means:

24 (1) For Southern California Edison Company, the burnertip  
25 price of natural gas.

26 (2) For Pacific Gas & Electric Company, the border price  
27 of natural gas.

~~(3) For San Diego Gas and Electric Company, the border price of natural gas.~~

(e) “GPn” means the border gas price as reflected in the applicable indices for the period being considered.

(f) “Non-gas-fueled QF” means a qualifying small power production facility or a qualifying cogeneration facility whose primary fuel is other than natural gas.

(g) “Power purchase agreement” means an agreement entered into pursuant to the PURPA between an electrical corporation and a QF that provides for the sale and delivery of electricity from the QF to the electrical corporation.

(h) “QF” means a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), (18) and 824a-3), and the regulations adopted for those sections under that act by the Federal Energy Regulatory Commission (18 C.F.R. 292.101-292.602).

(i) “Public Utility Regulatory Policies Act of 1978” means federal Public Law 95-617.

(j) “PURPA” means the Public Utility Regulatory Policies Act of 1978 and the regulations adopted under that act by the Federal Energy Regulatory Commission.

(k) “SRAC” means the short-run avoided cost of energy.

~~(l) “SRAC methodology” means the short-run avoided cost of energy methodology described in subdivision (b) of Section 390 that is used to determine energy prices paid to a QF. The methodology implements PURPA.~~

(m) “Switching QF” means a QF that has elected to have energy payments based on the hourly day-ahead constrained market clearing price paid by the independent Power Exchange under subdivision (c) of Section 390, as authorized by the commission in its Decision 99-11-025.

391.2. The Legislature finds and declares all of the following:

(a) The enactment of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session provides that the state will purchase all of the electricity, and ancillary services provided by the Independent System Operator, needed by consumers in excess of investor-owned generation, inter-utility contracts, and purchases from QFs. This article defines how the SRAC for QFs should be

computed *on an interim basis*, given the enactment of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session.

(b) Subdivision (b) of Section 390 and Decision 96-12-028 of the commission provide that the short-run avoided cost of energy within the meaning of PURPA, paid by an electrical corporation to a QF, be determined monthly based on an average of monthly indices of the price of natural gas at the California border.

(c) The determination of the SRAC based on the monthly gas price indices produces significant payment volatility and price instability for electrical corporations and the QFs.

(d) Restatement of the SRAC for non-gas-fueled QFs from the current monthly determination into a fixed value for a term of years will benefit customers, electrical corporations, and the QFs, by reducing payment volatility and increasing price stability.

(e) Restatement of the SRAC for gas-fired QFs from the current reliance on monthly natural gas indices to the use of longer-term natural gas prices will benefit customers, electrical corporations, and QFs by reducing payment volatility and increasing price stability.

(f) California’s biomass-to-energy industry provides clean renewable energy by converting millions of tons of waste wood and related organic materials derived from agricultural, urban, and forestry-related sources into electricity every year. However, this energy is provided at substantial expense. It is in the public interest to provide incentives to the biomass-to-energy industry to offset the cost of biomass fuel and retain the environmental and other benefits provided therefrom.

(g) The financial security and creditworthiness of California’s electrical corporations, and the assurance of their ability to make timely payments to QFs *pursuant to power purchase agreements*, is essential to the full effectiveness of this article.

391.3. (a) This section applies to QFs that operate under Sections 391.4 to 391.8, inclusive. *The purpose of Sections 391.4 to 391.8, inclusive, is to provide, from February 1, 2001, to January 31, 2006, inclusive, the SRAC payments to be made under power purchase agreements between QFs and investor owned public utilities that are subject to commission regulation.*

(b) Except in connection with the implementation of power purchase agreement provisions related to SRAC payments and to other matters expressly addressed in this article, nothing in this

1 article shall be interpreted to amend or modify any provision of a  
2 power purchase agreement, including, but not limited to, contract  
3 capacity provisions, nonstandard energy pricing terms, and fixed  
4 energy prices under Interim Standard Offer 4, or any other power  
5 purchase agreement. This subdivision does not prohibit mutual  
6 agreements to changes in a power purchase agreement by the  
7 parties to the agreement.

8 (c) Time-of-delivery and seasonal energy allocation factors in  
9 effect on January 1, 2001, ~~and specified in a power purchase~~  
10 ~~agreement~~ shall be applied to the SRAC payment determined  
11 pursuant to the applicable provision of this article following the  
12 methodology in the purchase power agreement for applying those  
13 allocation factors to the SRAC energy payment. The allocation  
14 factors may not be modified, except upon mutual agreement of the  
15 parties to a power purchase agreement.

16 (d) Energy line loss factors at both the transmission and  
17 distribution level shall be set at 1.0, unless a different number is  
18 otherwise specifically set forth in a power purchase agreement or  
19 unless the parties to a power purchase agreement agree otherwise.

20 ~~(e) The commission shall provide standard form amendments~~  
21 ~~to implement the provisions of this article. All power purchase~~  
22 ~~agreements subject to this article shall be modified to include the~~  
23 ~~applicable standard form amendments. The commission shall~~  
24 ~~provide in those amendments for full cost recovery for the entire~~  
25 ~~duration of the amendments.~~

26 ~~(f) The provision of subdivision (e) of Section 390 that permits~~  
27 ~~a nonutility power generator subject to Section 390 to elect to~~  
28 ~~receive energy payments based upon the clearing price from the~~  
29 ~~Independent Power Exchange shall not be operative for the period~~  
30 ~~of January 1, 2001, and June 30, 2006, inclusive, except for a~~  
31 ~~nonutility power generator that elected under subdivision (e) of~~  
32 ~~Section 390 prior to January 1, 2001.~~

33 ~~(g)~~

34 (e) (1) The implementation of this article is necessary so that  
35 QFs and electrical corporations can make long-term commitments  
36 that involve substantial risks. Further, there needs to be assurances  
37 that these commitments will be honored, including full cost  
38 recovery by the electrical corporations. ~~The commission shall~~  
39 ~~promptly approve, without modification, the agreements entered~~  
40 ~~into by electrical corporations and QFs to implement this article.~~

~~The commission's decision shall be final and the commission may not change the decision.~~

~~(2)~~

*(2) If a power purchase agreement needs to be amended in accordance with the provisions of this article in order for a QF to obtain financing or for other legal needs, within 10 days of the effective date of this article, the electrical corporation and the QF may submit to the commission for approval mutually agreed upon amendments. The commission shall promptly review the amendments upon receiving them. Unless the amendments are in violation of this article, the commission shall approve them. Once approved, the commission may not require any changes in the amendments.*

~~(3) At the time of approving an agreement amendments necessary to implement this article, the commission shall make an irrevocable determination of per se reasonableness of the agreement amendments, including full cost recovery by the electrical corporation of the resulting costs.~~

~~(h) Energy~~

*(f) SRAC payments to QFs, except switching QFs, for energy delivered beginning November 1, 2000, to February 1, 2001, shall be in accordance with the SRAC methodology and the avoided cost postings of the electrical corporations made in accordance with that methodology.*

391.4. (a) Except as provided in Sections 391.5 and 391.6, subdivision (d) of Section 391.7, and subdivisions (b), (c), and (d) of this section, for the period of February 1, 2001, to ~~June 30~~ *January 31*, 2006, inclusive, SRAC payments for energy delivered by non-gas-fueled QFs shall be established at 5.37 cents (\$0.0537) per kilowatthour, subject to subdivision (c) of Section 391.3.

~~(b) (1) A QF with a power purchasing agreement with fixed energy provisions, in which those fixed energy provisions will terminate during the period of February 1, 2001, to June 30, 2006, inclusive, may make the following elections regarding the electric power that is the subject of the agreement:~~

*(b) (1) If a QF has an Interim Standard Offer 4 contract with forecast energy payments that will terminate during the period of February 1, 2001, to January 31, 2006, inclusive, the QF may make the following elections regarding the electric power that is the subject of the contract:*



1 (A) Terminate the ~~fixed energy provisions of the agreement~~  
2 ~~forecast energy payments of the contract~~ as of February 1, 2001,  
3 and accept instead the pricing provisions of subdivision (a).

4 (B) Wait until the ~~fixed energy provisions of the agreement~~  
5 ~~forecast energy payments of the contract~~ terminate pursuant to the  
6 ~~agreement contract~~ and the energy pricing converts to SRAC  
7 payments. If the election is this subparagraph, the QF may elect  
8 SRAC payments determined pursuant to one of the following  
9 methods:

10 (i) The SRAC methodology as determined by the commission.

11 (ii) The product of 5.37 cents (\$0.0537) per kilowatthour times  
12 the levelized cost of a forward burnertip natural gas strip at the  
13 time of conversion to ~~June 30, 2006, divided by six dollars and~~  
14 ~~fifty cents (\$6.50) January 31, 2006, divided by seven dollars and~~  
15 ~~thirty cents (\$7.30)~~ per MMBtu.

16 (2) If a ~~power purchasing agreement has both fixed energy~~  
17 ~~provisions an Interim Standard Offer 4 contract has both forecast~~  
18 ~~energy payments~~ and energy payments subject to subdivision (c)  
19 of Section 390, the ~~fixed energy provisions forecast energy~~  
20 ~~payments~~ shall be subject to this subdivision and the energy  
21 payments subject to subdivision (c) of Section 390 shall be subject  
22 to Section 391.6.

23 (3) A QF with respect to ~~power purchasing agreements that are~~  
24 ~~a contract that is~~ subject to this subdivision shall make all elections  
25 required by this subdivision within 30 days from the effective date  
26 of this article. If the elections are not made within that 30-day  
27 period, then when the ~~fixed energy provisions of the power~~  
28 ~~purchasing agreement forecast energy payments of the contract~~  
29 terminate pursuant to the ~~agreement contract~~ and the energy  
30 payments convert to SRAC payments, the SRAC payments shall  
31 be determined using the SRAC methodology as determined by the  
32 commission.

33 (c) Notwithstanding subdivision (b), ~~San Diego Gas and~~  
34 ~~Electric Company and~~ Pacific Gas and Electric Company shall pay  
35 any non-gas-fueled QF whose forecast energy payments under an  
36 Interim Standard Offer 4 agreement terminate in 2001, 5.37 cents  
37 (\$0.0537) per kilowatthour, subject to subdivision (c) of Section  
38 391.3, for all energy delivered to ~~San Diego Gas and Electric~~  
39 ~~Company or~~ Pacific Gas and Electric Company, as applicable,  
40 commencing on the date on which the QF's forecast energy



1 payments terminate and continuing through ~~June 30~~ *January 31*,  
2 2006.

3 (d) For a QF with a contract with Southern California Edison  
4 Company for electricity generated by wind that specifies Capacity  
5 Payment Option B, the pricing for that contract shall be  
6 determined by this subdivision. The contract shall be amended as  
7 follows:

8 (1) On the effective date of this article, the contract shall be  
9 converted to Capacity Option A (forecast of as-available  
10 capacity). The conversion shall not obligate the QF to make any  
11 capacity payment refund to Southern California Edison, or subject  
12 the QF to any other penalty or repayment obligation.

13 (2) For the five-year period commencing ~~as of the effective~~  
14 ~~date of this article~~ *February 1, 2006*, a fixed, combined payment  
15 for both energy and capacity in the total amount of 7.8 cents  
16 (\$0.078) per kilowatthour shall be paid for each kilowatthour of  
17 electricity delivered pursuant to the contract. The fixed payment  
18 shall be the total compensation payable by Southern California  
19 Edison for electricity delivered under the contract during the  
20 five-year period. No allocation factor, including, but not limited  
21 to, time-of-delivery, may be applied to the fixed payment during  
22 the five-year period. After the five-year period, the price for  
23 energy shall revert to a price determined by using the then-current  
24 commission-approved SRAC methodology. Capacity payments  
25 following the five-year period shall be made as set forth in  
26 paragraph (3). Energy and capacity payments following the  
27 conclusion of the end of the five-year period shall be subject to  
28 commission-approved time-of-delivery allocation factors that are  
29 then being applied generally to SRAC payments.

30 (3) Commencing on the day following the five-year period that  
31 commences on the effective date of this article, capacity payments  
32 shall commence and be payable for the remaining term of the  
33 contract at an annual rate equal to the annual rate specified in the  
34 applicable contract for payment under the firm capacity option.  
35 That annual rate shall be converted to a cents per kilowatthour rate  
36 pursuant to Southern California Edison's general methodology for  
37 making forecast as-available capacity payments.

38 (4) It is the intent of the Legislature that, on the effective date  
39 of this section, Southern California Edison Company and the QFs  
40 subject to this subdivision mutually waive any and all pending

1 claims arising from or related to compliance with firm capacity  
2 on-peak performance requirements, compliance with annual  
3 capacity demonstration requirements, or failures to deliver  
4 contract capacity during system emergencies. It is further intended  
5 by the Legislature that no payments, refunds, or penalties shall be  
6 due or owing from a QF to Southern California Edison Company  
7 with respect to the pending claims on any claims of the same nature  
8 that arose between the parties prior to the effective date of this  
9 section.

10 ~~391.5. (a) Commencing on February 1, 2001, and ending on~~  
11 ~~June 30, 2006, payments for energy deliveries by QFs employing~~  
12 ~~solar thermal technology shall be based 75 percent on the pricing~~  
13 ~~methodology described in subdivision (a) of Section 391.4, and 25~~  
14 ~~percent based the energy pricing formula as established pursuant~~  
15 ~~to subdivision (c) of Section 391.8, even if the contract is not with~~  
16 ~~the Southern California Edison Company.~~

17 ~~(b) If a non-gas-fueled QF whose primary energy source is~~  
18 ~~solar energy has received final Federal Energy Regulatory~~  
19 ~~Commission certification orders, the commission shall not oppose~~  
20 ~~the use of natural gas by the QF within the limits of those~~  
21 ~~certification orders.~~

22 *391.5. (a) If a non-gas-fueled QF whose primary energy*  
23 *source is solar energy has received final Federal Energy*  
24 *Regulatory Commission certification orders, the commission shall*  
25 *not oppose the use of natural gas by the QF within the limits of*  
26 *those certification orders.*

27 *(b) From February 1, 2001, to January 31, 2006, inclusive, the*  
28 *payments for electrical energy delivered to the Southern*  
29 *California Edison Company by QFs employing solar thermal*  
30 *technology shall be based 75 percent on the pricing methodology*  
31 *of subdivision (a) of Section 391.4, and 25 percent on the energy*  
32 *pricing methodology of subdivision (c) of Section 391.8.*

33 *(c) This section is only applicable to certification requests*  
34 *made prior to, and to power purchase agreements entered into*  
35 *prior to, the effective date of this section.*

36 *391.6. (a) The provisions of subdivision (c) of Section 390*  
37 *that permit a nonutility power generator subject to Section 390 to*  
38 *elect to receive energy payments based upon the clearing price*  
39 *from the Independent Power Exchange shall not be operative for*  
40 *the period of January 1, 2001, to January 31, 2006, inclusive. A*

*QF that became a switching QF prior to January 1, 2001, shall be paid for energy deliveries pursuant to this section.*

(b) For the month of January 2001, a switching QF shall be paid for energy deliveries under the SRAC methodology, as that methodology was being implemented by the commission on January 1, 2001.

~~(b)~~

(c) The “switch date” for each switching QF shall be the date on which the switching QF began to receive energy prices based on the day-ahead clearing price paid by the independent Power Exchange under subdivision (c) of Section 390. Subdivision ~~(e)~~ ~~or~~ ~~(d)~~ (d) or (e) shall apply to a switching QF for the following terms, based on the QF’s switch date:

(1) If the switch date is June 1, 2000, the term is 54 months.

(2) If the switch date is July 1, 2000, the term is 48 months.

(3) If the switch date is August 1, 2000, the term is 42 months.

(4) If the switch date is September 1, 2000, the term is 36 months.

(5) If the switch date is October 1, 2000, the term is 30 months.

(6) If the switch date is November 1, 2000, the term is 24 months.

(7) If the switch date is December 1, 2000, the term is 18 months.

~~(e)~~

(d) Notwithstanding Section 391.4, commencing on February 1, 2001, and continuing for the term required under subdivision (b), the price for energy deliveries to an electrical corporation by a switching QF that is non-gas-fueled shall be 5.02 cents (\$0.0502) per kilowatthour. Following the expiration of that term, the price for energy deliveries by that QF shall be established pursuant to in accordance with the methodology set forth in subdivision (a) of Section 391.4.

~~(d)~~

(e) Beginning on February 1, 2001, and continuing for the term required under subdivision ~~(b)~~ (c), the price for energy deliveries to an electrical corporation by a switching QF that is gas-fired shall be adjusted by subtracting 3.5 mills (\$0.0035) per kilowatthour from the rate set forth under Section 391.8. Following the expiration of that term, prices for energy deliveries by that QF

1 shall be established in accordance with the methodology set forth  
2 in Section 391.8, without adjustment.

3 ~~(e)~~

4 (f) The price per kilowatthour for each switching QF for energy  
5 delivered between the QF's switch date and December 31, 2000,  
6 shall be equal to the independent Power Exchange's hourly  
7 day-ahead constrained market clearing price for the zone in which  
8 the QF is located, and shall not be subject to adjustment, revision,  
9 or true-up of any kind.

10 391.7. (a) For purposes of this section, "program" means the  
11 Central Valley Agricultural Biomass-to-Energy Incentive Grant  
12 Program established under Part 3 (commencing with Section  
13 1101) of Division 1 of the Food and Agricultural Code.

14 (b) ~~Upon Notwithstanding Part 3 (commencing with Section~~  
15 ~~1101) of Division 1 of the Food and Agricultural Code, upon~~  
16 appropriation, the sum of twenty million dollars (\$20,000,000) per  
17 year shall be transferred from the General Fund to the California  
18 Trade and Commerce Agency for the purposes of providing  
19 funding, commencing on July 1, 2001, to offset the costs of certain  
20 qualified solid biomass fuels, including, but not limited to, urban  
21 wood waste and forest-related materials resulting from timber  
22 harvesting *and other vegetation* conducted in full compliance with  
23 the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8  
24 (commencing with Section 4511) of Part 2 of Division 4 of the  
25 Public Resources Code) utilized by any biomass-to-energy  
26 facility; ~~and to extend until June 30, 2006, the funding of the~~  
27 ~~program, both as established under those provisions and as~~  
28 ~~expanded under this section.~~ This funding shall be provided in  
29 addition to any other funding provided for the existing program.

30 (c) The program shall continue to be administered by the Trade  
31 and Commerce Agency.

32 (d) *Notwithstanding subdivision (b) of Section 391.4, the*  
33 Southern California Edison Company shall pay a biomass QF  
34 company, whose forecast energy payments under an Interim  
35 Standard Offer 4 contract terminate during the period of February  
36 1, 2001, to ~~June 30, 2006, inclusive, January 31, 2006, inclusive,~~  
37 *a SRAC payment for energy of 5.37 cents (\$0.0537) per*  
38 kilowatthour subject to subdivision (c) of Section 391.3, for all  
39 energy delivered to the Southern California Edison Company from

the termination date of the forecast energy payments to ~~June 30~~  
*January 31, 2006, inclusive.*

391.8. (a) The purpose of the pricing methodology applicable to gas-fired QFs in this section is to link the SRAC price for energy provided by a gas-fired QF to the long-term cost of natural gas for the period from February 1, 2001, to ~~June 30, 2006~~  
*January 31, 2006, inclusive, or if the gas-fired QF's power purchase agreement terminates after commencement of that period and prior to June 30, 2006 January 31, 2006, then the period from that termination date to June 30, 2006 January 31, 2006, inclusive, by offering to the gas-fired QF the benchmark option, the portfolio option, and the actual cost option, pursuant to subdivision (g): a benchmark option, a portfolio option, and an actual cost option, pursuant to subdivision (e).*

(b) For a gas-fired QF selling energy to Pacific Gas and Electric Company, the SRAC payment shall be determined in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001, except that the GPn in the formula shall be replaced with a long-term GP. A long-term GP shall be established for the QF in accordance with subdivision (g). Until the time that a long-term GP is established under the agreement on long-term gas purchase arrangements, or following expiration of a long-term GP and prior to the establishment of a new long-term GP, if any, the gas-fired QF shall be paid for energy deliveries in accordance with the SRAC methodology ~~as it was being implemented by the commission on February 1, 2001, as may be revised by the commission.~~

(c) For a *gas-fired* QF selling energy to Southern California Edison Company, the SRAC payment for the QF shall be set equal to the sum of the following:

(1) The product of 9,821 Btu per kilowatthour, subject to subdivision (c) of Section 391.3, and the applicable long-term GP in dollars per MMBtu for that QF determined pursuant to subdivision (g), and divided by 10,000.

(2) Three mills (\$0.003) per kilowatthour multiplied by the average California Consumer Price Index as of December 31 of the year prior to the payment determination, and divided by the average California Consumer Price Index as of December 31, 2000.

1 Until the time that a long-term GP is established for the QF, or  
2 following expiration of a long-term GP and prior to the  
3 establishment of a new long-term GP, if any, the QF shall be paid  
4 for energy deliveries in accordance with the SRAC methodology,  
5 ~~as that methodology was implemented by the commission on~~  
6 ~~February 1, 2001 as may be revised by the commission.~~

7 (d) (1) For purposes of this subdivision, “QF Companies”  
8 mean Kern River Cogeneration Company, Sycamore  
9 Cogeneration Company, Midway Sunset Cogeneration Company,  
10 and Watson Cogeneration Company, individually or collectively.

11 ~~(2) Notwithstanding any other provision of this article, the~~  
12 ~~energy payments to QF companies shall be pursuant to the QF~~  
13 ~~company’s power purchase agreement with Southern California~~  
14 ~~Edison Company existing as of February 1, 2001, modified only~~  
15 ~~in accordance with the agreement on long-term gas price~~  
16 ~~determined pursuant to subdivision (g).~~

17 (2) *Nothing in this article shall be interpreted to amend or*  
18 *modify any provision of a power purchase agreement of any of the*  
19 *QF Companies. This subdivision does not prohibit mutual*  
20 *agreements to changes in a power purchase agreement by the*  
21 *parties to the agreement. The energy payments to a QF Company*  
22 *shall be determined pursuant to a QF Company’s power purchase*  
23 *agreement with Southern California Edison Company existing as*  
24 *of February 1, 2001, modified only pursuant to an agreement*  
25 *negotiated between Southern California Edison Company and the*  
26 *QF Company. The agreement to modify may provide for long-term*  
27 *gas procurement, contract extensions or other contract terms*  
28 *necessary to reduce the energy payment volatility resulting from*  
29 *the volatility in monthly natural gas prices, to produce lower*  
30 *electricity prices in the near term for consumers, or to sustain or*  
31 *increase the delivery of power to promote system reliability, while*  
32 *otherwise preserving existing contracts and their economic value*  
33 *to the QF Company. Any agreement to amend a power purchase*  
34 *agreement consistent with this subdivision shall be approved by*  
35 *the commission in accordance with subdivision (e) of Section*  
36 *391.3.*

37 (3) Notwithstanding paragraph (2) of subdivision (a) of  
38 Section 367, the implementation and administration of these  
39 agreements and contract modifications shall, in accordance with  
40 paragraph (2) of subdivision (g) of Section 391.3, be approved by



the commission as reasonable per se for cost recovery purposes and otherwise.

~~(e) For a gas-fired QF selling energy to San Diego Gas and Electric Company, the SRAC payment shall be determined in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001, except that G<sub>Pn</sub> in the formula shall be replaced with a long-term GP. A long-term GP shall be established for the QF in accordance with subdivision (g). Until the time that a long-term GP is established for the QF, or following expiration of a long-term GP, and prior to the establishment of a new long-term GP, if any, the gas-fired QF shall be paid for energy deliveries in accordance with the SRAC methodology as it was being implemented by the commission on February 1, 2001.~~

~~(f)~~

(e) A gas-fired QF with a power purchase agreement that contains nonstandard energy pricing terms may be included in the gas purchase arrangements described in subdivision ~~(g)~~ (f) if its power purchase agreement is conformed, by mutual agreement of the parties, to reflect the applicable energy pricing methodology set forth in this section.

~~(g)~~

(f) (1) The long-term ~~gas price~~ GP shall be determined for a QF pursuant to ~~one of the options of~~ this subdivision. *A public utility may submit to the commission an agreement with the QFs with whom it has power purchase agreements to implement the gas purchase options described in this subdivision not later than 10 days after the effective date of this section. The commission shall promptly review the implementation agreement in the same manner that amendments are reviewed pursuant to subdivision (e) of Section 391.3. A public utility shall inform each gas-fired QF with whom it has a power purchase agreement of the process for the a benchmark, portfolio, and actual cost gas options purchase option. Each gas-fired QF within 30 days of the effective date of this section shall select the gas purchase option to be used to determine the long-term gas price GP for purposes of this section. If the QF does not make the selection within the 30 days, the public utility shall select the option to be used for the QF then payments to the QF for electricity delivered to the electrical corporation under the applicable power purchase agreement shall be made in*



1 accordance with the SRAC methodology, as may be revised by the  
2 commission. Once a gas purchase option is selected, neither the QF  
3 nor the public utility may change the option.

4 ~~(2) Benchmark gas purchase option:~~

5 ~~(A) Each public utility and the gas-fired QFs with whom it has~~  
6 ~~a power purchase agreement shall, within 10 days of the effective~~  
7 ~~date of this section, select a procurement manager. If the parties~~  
8 ~~cannot agree on the procurement manager, the Treasurer shall~~  
9 ~~appoint the procurement manager.~~

10 ~~(B) Each gas-fired QF shall provide the procurement manager~~  
11 ~~with its gas requirements, timing, constraints, and any other~~  
12 ~~pertinent information within 10 days of the procurement manager~~  
13 ~~being selected.~~

14 ~~(C) The procurement manager, working with the public utility,~~  
15 ~~shall divide the gas-fired QFs into tranches, and shall determine~~  
16 ~~when to send those tranches out for bid. The procurement manager~~  
17 ~~and the public utility shall work to obtain the best gas price.~~

18 ~~(D) When the procurement manager obtains a bid, he or she~~  
19 ~~shall provide the bid to the public utility and to the Treasurer. Both~~  
20 ~~shall have one hour of receipt of the bid to either accept or reject~~  
21 ~~the bid. The Treasurer may only reject a bid if he or she determines~~  
22 ~~the bid is not in the state's best interest for recovering the moneys~~  
23 ~~the state has borrowed to finance the purchase of electric power.~~

24 ~~(E) If both the public utility and the Treasurer accept the bid,~~  
25 ~~the procurement manager shall present the bid to all the gas-fired~~  
26 ~~QFs with whom the public utility has a power purchase agreement.~~  
27 ~~Until the bid expires, but in no event less than two hours, each~~  
28 ~~gas-fired QF may accept the natural gas and the price or only the~~  
29 ~~price.~~

30 ~~(F) If a QF does not accept the price, then the long-term gas~~  
31 ~~price for the QF shall be the GPn gas price used in the~~  
32 ~~commission's then posted SRAC price.~~

33 ~~(3) Portfolio gas purchase option:~~

34 ~~(A) Each public utility and the gas-fired QFs with whom it has~~  
35 ~~a power purchase agreement shall, within 10 days of the effective~~  
36 ~~date of this section, select a portfolio manager. If the parties cannot~~  
37 ~~agree on the procurement manager, the Treasurer shall appoint the~~  
38 ~~portfolio manager.~~

39 ~~(B) Each gas-fired QF shall provide the portfolio manager with~~  
40 ~~its gas requirements, timing, constraints, and any other pertinent~~

1 ~~information within 10 days of the portfolio manager being~~  
2 ~~selected.~~

3 ~~(C) The procurement manager, working with the public utility,~~  
4 ~~shall purchase natural gas on a long term basis to minimize price.~~

5 ~~(D) When the portfolio manager obtains a bid, he or she shall~~  
6 ~~provide the bid to the public utility and to the Treasurer. Both shall~~  
7 ~~have one hour of receipt of the bid to either accept or reject the bid.~~  
8 ~~The Treasurer may only reject a bid if he or she determines the bid~~  
9 ~~is not in the state's best interest for recovering the moneys the state~~  
10 ~~has borrowed to finance the purchase of electric power.~~

11 ~~(E) If both the public utility and the Treasurer accept the bid,~~  
12 ~~the portfolio manager shall buy the natural gas for the portfolio.~~  
13 ~~The gas price for natural gas in the portfolio shall be the weighted~~  
14 ~~average cost of the natural gas in the portfolio.~~

15 ~~(F) A QF that agrees to the portfolio gas purchase option shall~~  
16 ~~purchase gas from the portfolio.~~

17 ~~(4) Actual cost option:~~

18 ~~(A) A gas-fired QF shall purchase natural gas for five years, or~~  
19 ~~the remaining term of the power purchase agreement, whichever~~  
20 ~~is less. The Treasurer may reject the purchase. The Treasurer may~~  
21 ~~only reject a purchase if he or she determines that the bid is not in~~  
22 ~~the state's best interest for recovering the moneys the state has~~  
23 ~~borrowed to finance the purchase of electric power.~~

24 ~~(B) The gas-fired QFs shall choose for all of them an~~  
25 ~~independent auditor, and shall provide the independent auditor the~~  
26 ~~actual natural gas cost information and the energy payments due~~  
27 ~~under this section based on the purchase price of the gas for each~~  
28 ~~gas-fired QF. The independent auditor shall review and approve~~  
29 ~~the bill.~~

30 ~~(C) The independent auditor shall aggregate all participating~~  
31 ~~gas-fired QF bills under this option, and shall send the aggregated~~  
32 ~~bill to the public utility. The public utility shall pay the~~  
33 ~~independent auditor, who shall disaggregate the funds received,~~  
34 ~~and disburse the funds to each gas-fired QF.~~

35 ~~(5)~~

36 ~~(2) For purposes of this subdivision, "Treasurer" means the~~  
37 ~~Treasurer of the state, or his or her designee.~~

38 ~~(6)~~

39 ~~(3) The Treasurer may review an agreement submitted to the~~  
40 ~~commission pursuant to paragraph (1) and disapprove of the~~

1 *implementation agreement if the long-term GP is not in the best*  
2 *financial interest of the state. A review by the Treasurer shall be*  
3 *done promptly.*

4 (4) The Treasurer shall prepare and submit a report to the  
5 Governor and to the appropriate committee's of the Legislature at  
6 least three times a year on the ~~performance of each public utility~~  
7 ~~in performing~~ *results of gas-fired QFs under the gas purchase*  
8 *options. The report shall include, if necessary, recommendations.*

9 ~~(h)~~

10 (g) No electrical corporation or gas corporation shall have any  
11 obligation to serve as a ~~portfolio manager under paragraph (3) of~~  
12 ~~subdivision (g)~~ *procurement manager for the cost gas purchase*  
13 *options specified in subdivision (f).*, and the commission may not  
14 subject any corporation's decisions to serve or not serve as  
15 ~~portfolio~~ *procurement manager to a reasonableness review. If any*  
16 *corporation serves as a portfolio procurement manager, the*  
17 *commission may not consider the results of that corporation's*  
18 ~~portfolio~~ *procurement management activities in connection with*  
19 *this section, in connection with any other jurisdictional*  
20 *reasonableness review of the corporation's natural gas*  
21 *procurement function.*

22 (h) (1) *Power purchase agreement for delivery of as-available*  
23 *capacity and energy for the delivery of capacity and energy under*  
24 *a firm QF power purchase agreement with a contract capacity of*  
25 *10 megawatts or less shall be paid for capacity at the price*  
26 *currently established under the power purchase agreement*  
27 *throughout the remaining term of the agreement, and paid for*  
28 *energy at the SRAC price in accordance with the SRAC*  
29 *methodology as it was being implemented by the commission on*  
30 *February 1, 2001.*

31 (2) *Notwithstanding paragraph (1), for capacity and energy*  
32 *deliveries to the Pacific Gas and Electric Company by a QF*  
33 *described in paragraph (1), if the QF does not agree to modify*  
34 *existing capacity payment terms to provide a 50 percent reduction*  
35 *in the capacity payments, the price for capacity deliveries by the*  
36 *QF to the Pacific Gas and Electric Company shall be calculated*  
37 *under the terms and conditions of the agreement, and the energy*  
38 *price shall be determined by the SRAC methodology, as*  
39 *determined by the commission.*

(i) (1) An electrical corporation may manage the natural-gas-cost component of its payments to gas-fired QFs by using gas-based and electric-based contracts to manage the natural gas price risk associated with QF contracts for the period from February 1, 2001 through January 31, 2006, inclusive. The volume covered by those contracts shall be limited to the total volume of natural gas included in the natural-gas-cost component of the payments to gas-fired QFs selling electricity to the electrical corporation during this period, as estimated from time-to-time by the electrical corporation. An electrical corporation using the provisions of this subdivision to manage the natural-gas-cost component of its payments to gas-fired QFs may enter into fixed-price energy contracts with gas-fired QFs that do not extend beyond January 31, 2006. A gas-fired QF that enters into a fixed-price energy contract pursuant to this subdivision is not subject to subdivisions (a), (b), (c), (d), (e), or (f).

(2) Each electrical corporation shall submit to the commission its plan, including its internal policies and procedures, for using financial and other contracts for the purposes of this subdivision. The commission shall review each plan and, unless a plan clearly fails to address those purposes, shall, within 15 business days of submission of the plan by the electrical corporation, approve the plan. The commission shall maintain strict confidentiality regarding the plans in accordance with Section 583. Concurrent with its approval of an electrical corporation's plan, the president of the commission shall designate a representative to review and pre-approve specific transactions if the transactions are consistent with the electrical corporation's plan. The commission president's designee shall maintain strict confidentiality regarding an electrical corporation's plan and any proposed transaction in accordance with Section 583. Because the transactions proposed by the electrical corporation will be time sensitive, the commission president's designee shall review each proposed transaction within two hours after receipt, if the electrical corporation presents the proposed transaction on a commission business day, during normal business hours. Failure to act on a proposed transaction within the specified time period shall be deemed approval of the proposed transaction.

(3) All costs incurred by the electrical corporation associated with the financial and other contracts needed to implement this

section, including any fees and other costs associated with retaining a third party to manage and enter into those contracts on behalf of the electrical corporation, shall be per se reasonable and shall be fully recoverable by the electrical corporation in retail rates. The electrical corporation's actions, with respect to timing, duration, quantity or adequacy of transactions proposed under this subdivision, or failure to propose such transactions, shall not be subject to reasonableness review by the commission. Notwithstanding any other provision of law, all costs associated with transactions that are approved consistent with paragraph (2) shall, be recovered from the generation-related portion of the retail rates before any such revenues are allocated to the California Procurement Adjustment for purposes of transfer to the Department of Water Resources as specified in Section 360.5. All benefits derived from all such transactions shall be used by the electrical corporation solely to reduce the electrical corporation's retail rates for electricity.

391.9. (a) (1) If a QF has not been paid by the Southern California Edison Company (SCE) or the Pacific Gas and Electric Company (PG&E) in accordance with a purchase power agreement for the month of November 2000, December of 2000, or January of 2001, SCE and PG&E shall make the payments for those months in accordance with the following schedule:

Month of delivery	Payment Due Date
November 2000	On or before April 2, 2001
December 2000	On or before May 1, 2001
January 2001	On or before June 1, 2001

(2) If a QF is not paid by SCE in accordance with paragraph (1) for moneys owed under all ~~purchase-power~~ *power purchase* agreements with SCE, notwithstanding any provision of this article, the QF as of February 1, 2001, shall be paid by SCE the ~~posted SRAC price~~ *SRAC price posted in accordance with the SRAC methodology* or the SRAC price determined pursuant to this article, whichever is greater, until all the moneys ~~owned~~ *owed* for November, December, and January are paid to the QF.

(3) PG&E owes no moneys to QFs for the month of November 2000. If a QF is not paid by PG&E in accordance with paragraph

(1) for moneys owed under all ~~purchase-power~~ *power purchase* agreements with PG&E, then notwithstanding any provision of this article, the QF as of February 1, 2001, shall be paid by PG&E the ~~posted SRAC price~~ *SRAC price posted in accordance with the SRAC methodology* or the SRAC price determined pursuant to this article, whichever is greater, until all moneys ~~owned~~ owed for December and January are paid to the QF.

(b) *This article shall not become operative until a statute is enacted that authorizes the acquisition by the state from the physical assets from the Pacific Gas and Electric Company, Southern California Edison Company, and the San Diego Gas and Electric Company.*

(c) This article shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 2.~~

SEC. 3. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

~~SEC. 3.~~

SEC. 4. The Legislature finds and declares that, because of the unique circumstances applicable only to specified public utilities and qualified facilities, a statute of general applicability cannot be enacted within the meaning of subdivision (d) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

~~SEC. 4.~~

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 5.~~

1     *SEC. 6.* This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety  
3 within the meaning of Article IV of the Constitution and shall go  
4 into immediate effect. The facts constituting the necessity are:

5     To help avoid Stage 3 alerts in California, it is necessary that this  
6 act take effect immediately.

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